IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
APPEAL FROM ORDER NO.570 OF 2007

Mohammed Razi ..Appellant.
Vs.
1. Mumbai Metropolitan Region Development Authority (MMRDA) & Anr. ..Respondents.

Mr.Mukesh Vashi, adv. i/by M/s. M.P.Vashi & Associates for the Appellant.

Mr.Kiran Bhagalia, adv. for the Respondent No.1.

CORAM : J.H.BHATIA, J.
DATE : NOVEMBER 27, 2007.

P.C.:

1. Heard the learned counsel for the Parties.

2. Mr.Vashi contended that under Section 17 of the MMRDA Act, 1974, the Metropolitan Authority may, in consultations with the Municipal Commissioner of the Brihan Mumbai Municipal Corporation, prepare any project or scheme with a view to provide an infrastructure within the territorial limits of the Brihan Mumbai Municipal Corporation and execute the same. The explanation to Section 17(1) provides that that the term of "infrastructure" shall also mean and include streets, roads, bridges and any other means of transport and communication, and activities related or incidential for the execution of such infrastructure project or scheme and shall not include other items

specified in section 61 and 63 of the Mumbai Municipal Corporation Act. However, the notice dated 13-7-2006 issued under Section 351 by the executive engineer of the MMRDA nowhere refers to any infrastructure development or any scheme, which is likely to be affected by the unauthorised structure of the cattle shed of the appellant. Mr.Vashi contended that merely because such structure is unauthorised, the MMRDA can not remove or issue notice under Section 351 but can take action for removal only if it affects the infrastructure as defined under Section 17 of the MMRDA Act. According to him, this aspect has not been taken into account by the learned trial Court while deciding the notice of motion. On the other hand, the learned counsel for the respondents contend that such specific plea was not taken before the trial Court by the appellant and, therefore, this aspect was not taken into consideration. Mr.Vashi at this stage makes a statement that he will make proper challenge to the notice issued by the respondent. The appellant will be required to make appropriate amendment in the plaint. In my considered opinion if he makes that amendment, the respondent will also get opportunity to produce the complete material on record and plea as to how the unauthorised structure of the appellant causes obstruction in the infrastructure and development undertaken by the MMRDA. In view of this in my

considered opinion, it will be appropriate to remand this matter with liberty to the appellant to make appropriate amendment and also the right to respondent to file appropriate reply to the same. Mr.Vashi requested that interim stay may be granted but in the present matter, no interim stay was granted earlier and the learned counsel for the respondent makes a statement that in spite of no interim relief granted by the Court, the MMRDA has not taken any steps to remove the structure during last six months. In such circumstances I think purpose will be served if the MMRDA does not take further steps for removal of the structure for a period of two months so that notice of motion may be heard and finally disposed off by the trial Court.

3. Appeal is disposed off with following directions:

. The appellant is allowed to make appropriate amendment, if any, within one week from this day and the respondent will also file reply within one week thereafter . The trial Court shall expedite the hearing of the notice of motion and decide the same as far as possible within 8 weeks from this day. The MMRDA shall maintain status-quo for a period of eight weeks.

[J.H.BHATIA, J.]